

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDWARD HEUER,

Plaintiff,

v.

STEVEN TETZLAFF,

Defendant.

ORDER

11-cv-302-slc

Plaintiff Edward Heuer, currently incarcerated at the Fox Lake Correctional Institution, filed this case in the Circuit Court for Dane County, Wisconsin. On April 26, 2011, defendant Steven Tetzlaff, a sergeant at the prison, removed the action to this court. Because Heuer is a prisoner, he is subject to the 1996 Prison Litigation Reform Act. Pursuant to the act, the court will screen his complaint pursuant to 28 U.S.C. § 1915A and determine whether Heuer's proposed action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). Heuer has cleared this hurdle and the state will be required to respond.

ALLEGATIONS OF FACT

In addressing any pro se litigant's complaint, the court must read the allegations of the complaint generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). In his complaint, Heuer alleges, and the court assumes for purposes of this screening order, the following facts.

- Plaintiff Edward Heuer is currently incarcerated at the Fox Lake Correctional Institution, located in Fox Lake, Wisconsin. He is confined to a wheelchair because of numerous medical problems.
- Defendant Steven Tetzlaff is a correctional officer at the institution.

- On June 17, 2010, Heuer traveled to the center office of unit three, where Tetzlaff was distributing medications.
- Although he did not have his identification card, he showed Tetzlaff a letter from his doctor. Tetzlaff became highly agitated and upset and screamed at plaintiff that he would not give him any medications without his identification card.
- When Heuer returned with his identification card, Tetzlaff punched the medication out of the package and it fell to the floor. Tetzlaff became highly agitated and almost violent with Heuer.
- Tetzlaff screamed at Heuer to pick up the pill. Heuer refused. Tetzlaff pushed Heuer back with such force that he thought the wheelchair was going to tip over.
- Heuer's shoulder was slammed into the door frame, causing him immediate and unbearable pain.
- Tetzlaff ordered Heuer back into his office. When giving Heuer his medication, Tetzlaff slammed his hand into the desk with force, causing him pain and suffering.
- The next day Heuer sought medical treatment for his injuries. Presently, he suffers severe pain in his shoulder and had limited use of his left arm.

OPINION

Heuer claims defendant Tetzlaff used excessive force on him. In the context of prison, excessive force claims arise under the Eighth Amendment. *Whitley v. Albers*, 475 U.S. 312 (1986) and *Hudson v. McMillian*, 503 U.S. 1 (1992). The Eighth Amendment prohibits conditions of confinement that “involve the wanton and unnecessary infliction of pain.” *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). Because prison officials must sometimes use force to maintain order, the central inquiry for a court faced with an excessive force claim is whether the force “was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson*, 503 U.S. at 6-7. To determine whether force was used appropriately, a court considers factual allegations revealing the safety threat perceived by the officers, the need

for the application of force, the relationship between that need and the amount of force used, the extent of the injury inflicted and the efforts made by the officers to mitigate the severity of the force. *Whitley*, 475 U.S. at 321; *Outlaw v. Newkirk*, 259 F.3d 833, 837 (7th Cir. 2001). In *Hudson*, 503 U.S. at 9-10, the Court explained that while the extent of injury inflicted is one factor to be considered, the absence of a significant injury does not bar a claim for excessive force so long as the officers use more than the minimally necessary amount of force.

Here, Heuer alleges that defendant Tetzlaff pushed his wheelchair into a door, injuring his shoulder and slammed his hand into the desk. At this early stage of the proceedings, Heuer's allegations are sufficient to state a claim of excessive force under the Eighth Amendment against defendant Tetzlaff, because Tetzlaff did not appear to have any reason to use force. Heuer should be aware, however, that to be successful on this claim he will have to prove that Tetzlaff used force maliciously and sadistically to cause him harm.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Edward Heuer's request to proceed on his claim that defendant Steven Tetzlaff violated his Eighth Amendment rights is GRANTED.
- (2) The Wisconsin Department of Justice has indicated that it will represent the defendant in this case. Pursuant to an informal service agreement between the Department of Justice and this court, the Department has agreed to accept electronic service of documents on behalf of the defendants it represents. Therefore, for the remainder of this lawsuit, plaintiff does not have to send a paper copy of each document he files with the court to the Department. All he has to do is submit the document to the court, and the Department will access the document through the court's electronic filing system.
- (3) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical

handwritten or typed copies of his documents.

- (4) Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). This court will notify the warden at his institution of that institution's obligation to deduct payments until the filing fee has been paid in full.

Entered this 2nd day of August, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge